

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

# GEORGE TERRY LANGLEY.

No. 1:14-CV-3069-SMJ

**Plaintiff,**

V.

# GEICO GENERAL INSURANCE COMPANY.

## **ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

Defendant.

## I. INTRODUCTION

Before the Court, without oral argument, is Defendant GEICO General Insurance Company's Motion for Partial Summary Judgment Regarding IFCA Claim, ECF No. 49. Defendant seeks dismissal of Plaintiff's Insurance Fair Conduct Act (IFCA) Claim because there was no denial of coverage or benefits. Having reviewed the pleadings and the file in this matter, the Court is fully informed and denies the motion finding that the IFCA claim may proceed either as an unreasonable denial of payment of benefits or for violating an enumerated Washington Administrative Code (WAC) provision.

1                           **II. BACKGROUND**

2                           **A. Factual Background<sup>1</sup>**

3                           This case involves a dispute over a Recreational Vehicle (“RV”) insured by  
4 GEICO under policy of insurance number 4262593512. The RV was purchased  
5 with a salvage title by Sunwest through an online Co-Part auction for \$50,500 on  
6 August 16, 2012. Sunwest allegedly repaired the vehicle and sold it to Plaintiff  
7 for \$270,000. ECF No. 6-D. On April 18, 2013, Plaintiff purchased GEICO  
8 policy of insurance No. 4262593512. On June 10, 2013, the RV was completely  
9 destroyed by fire while being driven to a Pasco dealership by a Sunwest  
10 employee. GEICO offered to pay plaintiff the original purchase price for the  
11 salvage title RV of \$50,500 by correspondence dated February 19, 2014. ECF  
12 No. 6-M.

13                           **B. Procedural Background**

14                           On May 6, 2014, Plaintiff filed the current lawsuit against Defendant in  
15 Yakima County Superior Court, which Defendant subsequently removed to this  
16 Court on May 27, 2014. ECF No. 1.

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18                           <sup>1</sup> In ruling on the motion for summary judgment, the Court has considered the facts and all reasonable inferences  
19 therefrom as contained in the submitted affidavits, declarations, exhibits, and depositions, in the light most  
20 favorable to the party opposing the motion. See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).  
However, in considering the facts, the Court does not rely on conclusory allegations unsupported by factual data,  
*Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993), nor does the Court rely upon facts contained in affidavits  
which directly contradict the affiants prior deposition testimony, *Burrell v. Star Nursery, Inc.*, 170 F.3d 951, 955  
(9th Cir. 1999).

1       On July 1, 2014, Defendant moved to compel compliance with the  
2 insurance policy's appraisal provision. ECF No. 5. After the Court granted the  
3 appraisal on August 29, 2014, ECF No. 25, Plaintiff sought reconsideration, ECF  
4 No. 26, which was denied, ECF No. 30. Subsequently, Defendant moved twice to  
5 compel Plaintiff's compliance with the appraisal process, ECF Nos. 31 & 41,  
6 which the Court subsequently granted. ECF No. 47.

7       On November 4, 2014, Defendant moved to dismiss Plaintiff's claim for  
8 *Olympic Steamship* attorney fees on the grounds that no denial of coverage  
9 occurred. ECF No. 36. On December 8, 2014, the Court dismissed the *Olympic*  
10 *Steamship* attorney fee claim based upon Plaintiff concurring that dismissal was  
11 proper, ECF No. 37. ECF No. 48.

12       On December 18, 2014, Defendant filed for partial summary judgment on  
13 Plaintiff's IFCA claim. ECF No. 49. On February 12, 2015, the Court was  
14 advised that the appraisal process will not conclude until the end of March 2015.  
15 ECF No. 70 at 4.

16                   **III. MOTION FOR PARTIAL SUMMARY JUDGMENT**

17           **A. Legal Standard**

18       Summary judgment is appropriate if the "movant shows that there is no  
19 genuine dispute as to any material fact and the movant is entitled to judgment as a  
20 matter of law." Fed. R. Civ. P. 56(a). Once a party has moved for summary

1 judgment, the opposing party must point to specific facts establishing that there is  
2 a genuine dispute for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If  
3 the nonmoving party fails to make such a showing for any of the elements  
4 essential to its case for which it bears the burden of proof, the trial court should  
5 grant the summary judgment motion. *Id.* at 322. “When the moving party has  
6 carried its burden under Rule [56(a)], its opponent must do more than simply  
7 show that there is some metaphysical doubt as to the material facts. . . . [T]he  
8 nonmoving party must come forward with ‘specific facts showing that there is a  
9 genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475  
10 U.S. 574, 586-87 (1986) (internal citation omitted) (emphasis in original). When  
11 considering a motion for summary judgment, the Court does not weigh the  
12 evidence or assess credibility; instead, “the evidence of the non-movant is to be  
13 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v.*  
14 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When considering the summary  
15 judgment motion, the Court 1) took as true all undisputed facts; 2) viewed all  
16 evidence and drew all justifiable inferences therefrom in non-moving party’s  
17 favor; 3) did not weigh the evidence or assess credibility; and 4) did not accept  
18 assertions made that were flatly contradicted by the record. See *Scott v. Harris*,  
19 550 U.S. 372, 380 (2007); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255  
20 (1986).

1      **B. Discussion**

2      Defendant seeks summary judgment on Plaintiff's IFCA claim because  
3 there was no denial of coverage or benefits. However, the parties dispute what  
4 causes of action exist under the IFCA. Accordingly, this Court first construes the  
5 provisions of the IFCA and then proceeds to address Defendant's motion.

6      1. Insurance Fair Conduct Act, RCW 48.30.015

7      The Washington State legislature passed the IFCA and referred it for a vote  
8 of the people as Referendum 67 in 2007. Voters approved Referendum 67 on  
9 November 6, 2007. The parties dispute what causes of action are available under  
10 the IFCA, codified at RCW 48.30.015.

11     To determine what causes of action are available, the Court must turn to any  
12 controlling Washington Supreme Court precedent interpreting the applicable  
13 statute. In the absence of controlling Washington Supreme Court precedent, the  
14 Court is *Erie*-bound to apply the law as it believes the Washington Supreme Court  
15 would do so under the circumstances. *See Erie Railroad Co. v. Tompkins*, 304  
16 U.S. 64 (1938); *Commissioner v. Estate of Bosch*, 387 U.S. 456, 465 (1967) ("If  
17 there is no decision by [the state supreme] court then federal authorities must  
18 apply what they find to be the state law after giving 'proper regard' to relevant  
19 rulings of other courts of the State").

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1                   a. Existing Case Law

2         Here, neither party cites, nor has this Court found, any Washington  
3 Supreme Court precedent interpreting RCW 48.30.015. However, the parties do  
4 point to one nonbinding Washington appellate decision. In *Ainsworth*, the  
5 Washington Court of Appeals addressed RCW 48.30.015(1) finding that the  
6 section describes “two separate acts giving rise to an IFCA claim. The insured  
7 must show the insurer unreasonably denied a claim for coverage or that the insurer  
8 unreasonably denied payment of benefits. If either or both acts are established, a  
9 claim exists under IFCA.” *Ainsworth v. Progressive Cas. Ins. Co.*, 180 Wn. App.  
10 52, 79 (2014) (not addressing RCW 48.30.015(5), finding a reasonable jury could  
11 reach only the conclusion that both an unreasonable denial of coverage and an  
12 unreasonable denial of payment occurred). Accordingly, neither party appears to  
13 dispute that a cause of action can arise from either an unreasonable denial of  
14 coverage or an unreasonable denial of payment of benefits.

15         However, Plaintiff maintains a third cause of action exists. Plaintiff  
16 maintains that a violation of the enumerated WAC provisions cited in RCW  
17 48.30.015(5) is an independent basis for a cause of action, regardless of coverage  
18 or benefits. To refute Plaintiff’s interpretation, Defendant points to a line of  
19 federal court opinions. Reviewing the progeny of Washington federal court cases  
20

1 addressing RCW 48.30.015, the Court is not persuaded that they provided a  
2 proper interpretation of RCW 48.30.015.

3       The line of federal court opinions began in 2010 in the Western District of  
4 Washington. The *Travelers* Court, looking only at RCW 48.30.015(1), found no  
5 violation of the IFCA because the denial of coverage was reasonable. *Travelers*  
6 *Indem. Co. v. Bronsink*, C08-1524JLR, 2010 WL 148366, at \*2 (W.D. Wash. Jan.  
7 12, 2010). Subsequently, in *Bronsink*, Judge Pechman stated that “[t]here are two  
8 ways by which an insurer can violate the IFCA. One is by “unreasonably”  
9 denying coverage . . . The IFCA also enumerates several sections of the  
10 Washington Administrative Code (“WAC”), the violation of any one of which  
11 will trigger a violation of the statute.” *Bronsink v. Allied Prop. & Cas. Ins. Co.*,  
12 C09-751MJP, 2010 WL 2342538, at \*2 (W.D. Wash. June 8, 2010). However,  
13 the *Bronsink* opinion provides no explanation for how the Court reached the  
14 conclusion that the WACs were independently actionable under the IFCA. After  
15 *Bronsink*, a subsequent opinion by Judge Lasnik reached the opposite conclusion.  
16 In *Lease*, a plaintiff did not allege a denial of coverage or payment, but instead  
17 argued that a violation of WAC 284-30-330 constituted a per se violation of the  
18 IFCA. *Lease Crutcher Lewis WA, LLC v. Nat'l Union Fire Ins. Co.*, C08-  
19 1862RSL, 2010 WL 4272453, at \*5 (W.D. Wash. Oct. 15, 2010). The Court  
20 disagreed without addressing the prior opinion in *Bronsink* and found that “[t]he

language of the statute does not support plaintiff's argument. A violation of WAC 284-30-030 may justify the imposition of treble damages under RCW 48.30.015(2) and/or an award of fees and costs under RCW 48.30.015(3), but an underlying denial of coverage is still required." *Id.* The decisions in *Travelers* and *Lease* were then cited favorably by Judge Robart when he reached the same conclusion finding "[v]iolation of the regulations enumerated in RCW 48.30.015(5) provide grounds for trebling damages or for an award of attorney's fees; they do not, on their own, provide a cause of action absent an unreasonable denial of coverage or payment of benefits." *Weinstein & Riley, P.S. v. Westport Ins. Corp.*, C08-1694JLR, 2011 WL 887552, at \*30 (W.D. Wash. Mar. 14, 2011).

While in *Bronsink* Judge Pechman initially found violations of the WACs sufficient to trigger a violation of the IFCA, she subsequently retracted that position in two later opinions. See *MK Lim, Inc. v. Greenwich Ins. Co.*, C10-374MJP, 2011 U.S. Dist. LEXIS 126395 \*7-8 (W.D. Wash. May 23, 2011) (After citing favorably to *Travelers*, *Lease*, and *Weinstein*, the Court noted its prior opinion in *Bronsink* and stated that the "Court is not convinced [*Bronsink*] is a proper reading of IFCA." "The Legislature only provided a cause of action to one who has suffered an unreasonably denial of coverage, not merely one who can show a violation of one of the enumerated the [sic] WACs."); *Pinney v. American Family Mut. Ins. Co.*, C11-175MJP, 2012 WL 584961 \*5 (W.D. Wash. Feb. 22,

1 2012) (“Here, the Court follows the analysis of [*Travelers, Lease, and Weinstein*]  
2 and finds a violation of one of the enumerated WAC provisions alone is not  
3 sufficient to sustain a cause of action under IFCA.”).

4       The remaining federal authority rejecting a cause of action for a WAC  
5 violation all reference back to the same cases in the Western District of  
6 Washington. *See e.g. Cardenas v. Navigators Ins. Co.*, C11-5578 RJB, 2011 WL  
7 6300253, at \*6 (W.D. Wash. Dec. 16, 2011) (citing to *Weinstein* and *Travelers* for  
8 the proposition that the WACs do not alone provide a IFCA cause of action);  
9 *Morella v. Safeco Ins. Co. of Illinois*, C12-0672RSL, 2013 WL 1562032, at \*3  
10 (W.D. Wash. Apr. 12, 2013) (same); *Kabrich v. Allstate Prop. & Cas. Ins. Co.*,  
11 CV-12-3052-LRS, 2014 WL 3925493, at \*11 (E.D. Wash. Aug. 12, 2014) (citing  
12 *Weinstein*); *Babcock v. ING Life Ins. & Annuity Co.*, 12-CV-5093-TOR, 2013 WL  
13 24372, at \*8 (E.D. Wash. Jan. 2, 2013) (citing to *Cardenas* and *Weinstein*).

14       However, recently, authority in the Eastern District of Washington has  
15 begun to reject the precedent set by the Western District. *See Merrill v. Crown*  
16 *Life Ins. Co.*, 13-CV-0110-TOR, 2014 WL 2159266 (E.D. Wash. May 23, 2014)  
17 (“The statute creates a private right of action against an insurer which (1)  
18 “unreasonably denie[s] a claim for coverage or payment of benefits”; and/or (2)  
19 violates one of several claims handling regulations promulgated by the  
20 Washington State Office of the Insurance Commissioner. RCW 48.30.015(1),

1 (5).”); *Hell Yeah Cycles v. Ohio Sec. Ins. Co.*, 16 F.Supp.3d 1224, 1235-36 (E.D.  
 2 Wash. Apr. 28, 2014) (“The statute also specifies that a first-party claimant may  
 3 sue his or her insurance company for violating any of the claims-handling  
 4 regulations promulgated by the Washington State Office of the Insurance  
 5 Commissioner at WAC 284-30-330 *et seq.* RCW 48.30.015(5.”).<sup>2</sup> Similarly,  
 6 this Court, without providing a full explanation of its reasoning, stated in a  
 7 discovery dispute that “it is a violation of the IFCA for an insurer to refuse to pay  
 8 claims without conducting a reasonable investigation. WAC 284-30-330(4).”  
 9 *Hover v. State Farm Mut. Auto. Ins. Co.*, No. CV-13-05113-SMJ, 2014 WL  
 10 4239655, at \*4 (E.D. Wash. Aug. 26, 2014) reconsideration denied, No. 13-CV-  
 11 05113-SMJ, 2014 WL 4546048 (E.D. Wash. Sept. 12, 2014)(“ Defendant believes  
 12 this was manifest error because ‘the only thing that gives rise to an IFCA violation  
 13 is an unreasonable denial of a claim for coverage or payment of benefits.’ ECF  
 14 No. 57 at 5. This is false.”).

15        Ultimately, having reviewed the existing case law, the Court is not  
 16 persuaded that an IFCA cause of action requires a denial of coverage or benefit.  
 17 Most of the authority cited is premised upon the rulings in *Travelers*, *Lease*, and  
 18 *Weinstein*. However, *Travelers* only addressed RCW 48.30.015(1) and did not

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19  
 20       <sup>2</sup> The Court notes that in 2013 *Babcock* opinion Judge Rice followed the holdings from the Western Washington progeny of cases, but subsequently in *Merrill* and *Hell Yeah Cycles* appears to be moving back toward the initial finding in *Bronsink* by adding the “and/or violates one of several claims handlings regulations” and citing to “RCW 48.30.015(5)” for a cause of action.

1 discuss the possible implications of RCW 48.30.015(2), (3), and (5).  
2 Additionally, *Lease* and *Weinstein* limited its analysis of RCW 48.30.015(5) as  
3 enumerating WACs which give rise to treble damages, costs, and fees under RCW  
4 48.30.015(2) and (3). The opinions do not provide any analysis of the statutory  
5 construction they utilized to reach their conclusions, and appear to only be looking  
6 for express causes of action without determining whether the IFCA creates an  
7 implied cause of action for violating an enumerated WAC.<sup>3</sup>

8           b.     Implied Cause of Action

9           The legislature may implicitly or explicitly create a cause of action. *See*  
10 *Ducote v. Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 702–03 (2009).  
11 Whether a statute creates a cause of action is a matter of statutory construction.  
12 *Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 15 (1979). Under the  
13 ordinary rules of statutory construction, all of the words of the statute must be  
14 given effect, so that no provision is rendered meaningless or superfluous. *State v.*  
15 *Roggenkamp*, 153 Wn.2d 615, 624 (2005). As in most matters of statutory  
16 construction, the ultimate goal is to determine the intent of the legislature. *See*  
17 *Transamerica*, 444 U.S. at 15–16. If the legislature does not expressly create a  
18 cause of action, the Washington Supreme Court utilizes a three-part test to  
19 determine the legislature's intent. *Bennett v. Hardy*, 113 Wn.2d 912, 920–21

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20 <sup>3</sup> The Court concurs with the conclusions in *Bronsink*, *Merrill*, and *Hell Yeah Cycles* that a cause of action exists  
for violating the WACs, but as those opinions do not explain how their conclusions were reached, the Court  
provides a full explanation of its reasoning.

1 (1990). The Court must determine whether the plaintiff is “within the class for  
2 whose ‘especial’ benefit the statute was enacted”; whether “legislative intent,  
3 explicitly or implicitly, supports creating or denying a remedy”; and “whether  
4 implying a remedy is consistent with the underlying purpose of the legislation.”  
5 *Id.* Implied causes of action are based upon the assumption that “‘the legislature  
6 would not enact a remedial statute granting rights to an identifiable class without  
7 enabling members of that class to enforce those rights.’” *Bennett*, 113 Wn.2d at  
8 919–20, (quoting *McNeal v. Allen*, 95 Wn.2d 265, 277 (1980) (Brachtenbach, J.,  
9 dissenting)).

10                   *i. Plaintiff is Within the Class Protected by the Statute*

11                  The first part of the test is satisfied because Plaintiff is “within the class for  
12 whose ‘especial’ benefit the statute was enacted.” *Bennett*, 113 Wn.2d at 920.  
13 RCW 48.30.015 was enacted to provide insureds with a legal recourse against  
14 their insurer independent from the Consumer Protection Act. Plaintiff is a first  
15 party claimant under an insurance policy who’s interest the legislature sought to  
16 protect.

17                   *ii. Legislative Intent Supports Creating a Claim*

18                  The second part of the test is satisfied because there are two sources of  
19 explicit legislative intent to create a claim for violating the enumerated WACs.

20 //

1       The language in the statute provides support for creating a claim. Under the  
2 ordinary rules of statutory construction, all of the words of the statute must be  
3 given effect, so that no provision is rendered meaningless or superfluous. *State v.*  
4 *Roggenkamp*, 153 Wn.2d 615, 624 (2005). The statue provides a list of rules for  
5 which a violation “is a violation for the purposes of subsections (2) and (3) of this  
6 section.” RCW 48.30.015(5). Subsections (2) and (3) provide

7           (2) The superior court **may**, after finding that an insurer has acted  
8 unreasonably in denying a claim for coverage or payment of benefits  
9 **or has violated a rule in subsection (5) of this section**, increase the  
total award of damages to an amount not to exceed three times the  
actual damages.

10          (3) The superior court **shall**, after a finding of unreasonable denial of  
11 a claim for coverage or payment of benefits, **or after a finding of a**  
**violation of a rule in subsection (5) of this section**, award  
12 reasonable attorneys' fees and actual and statutory litigation costs,  
including expert witness fees, to the first party claimant of an  
insurance contract who is the prevailing party in such an action.

13       RCW 48.30.015(2), (3) (emphasis added). Defendant maintains subsections (2)  
14 and (3) limit violations of subsection (5) to damages. However, such an  
15 interpretation renders all of subsection (5) superfluous and meaningless. If, as  
16 Defendant argues, a denial of coverage or benefits is necessary to maintain a cause  
17 of action, then in every case in which such a denial of coverage or benefits exists  
18 the “court shall” award reasonable fees and costs and “may” award treble  
19 damages. RCW 48.30.015(2), (3). Accordingly, under Defendant’s theory, in  
20 every IFCA claim the plaintiff either 1) fails to demonstrate a denial of coverage

1 or benefits and the claim is dismissed, or 2) demonstrates a denial of coverage or  
2 benefits, and on that fact alone, the court has the discretion to award treble  
3 damages and is required to award fees and costs. Therefore, a violation of  
4 subsection (5) would always be immaterial because the denial of coverage or  
5 benefit would always be independently sufficient to compel the award of fees and  
6 costs, thus rendering all of subsection (5) superfluous and meaningless. The  
7 legislature wrote subsections (2) and (3) in the disjunctive “or” and therefore  
8 when interpreting the statute the Court must give each disjunctive clause effect.  
9 The legislature mandated that a court award attorney fees and costs “after a  
10 finding of a violation of a rule in subsection (5).” The only way for this mandate  
11 to have any meaning is if plaintiffs have a cause of action for a violation of  
12 subsection (5).

13 This interpretation of the IFCA is further supported by Referendum 67’s  
14 explanatory statement. The effect of Referendum Measure 67 was explained to  
15 the voters as follows:

16 ESSB 5726 would authorize any first party claimant to bring a  
17 lawsuit in superior court against an insurer for unreasonably denying  
18 a claim for coverage or payment of benefits, **or violation of specified**  
**insurance commissioner unfair claims handling practices**  
**regulations**, to recover damages and reasonable attorney fees, and  
litigation costs.

19 Explanatory Statement, Referendum Measure 67, *State of Washington Voters’*  
20 *Pamphlet*, Office of the Secretary of State, at 14 (Nov. 6, 2007),

1 http://www.sos.wa.gov/\_assets/elections/Voters%27%20Pamphlet%202007.pdf  
2 (“The Explanatory Statement was written by the Attorney General as required by  
3 law and revised by the court.”) (emphasis added). Thus, when voters approved  
4 the passage of the IFCA, a violation of the specified regulations, i.e. subsection  
5 (5), was contemplated as a basis to bring a lawsuit.

6 Accordingly, the Court finds legislative intent to create a claim for violating  
7 the enumerated WACs in both the language in the statute and the explanation of  
8 that language provided to the voters.

9                   *iii. Implied Remedy Is Consistent with the IFCA’s Purpose*

10 Finally, the Court finds implying a remedy is consistent with the IFCA’s  
11 purpose to provide fairness in the insurance claim process and encourages insurers  
12 to engage in fair claims settlement practices. *See Trinity Universal Ins. Co. of*  
13 *Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 201 (2013) (“The purpose of  
14 IFCA is to protect individual policy holders from unfair practices by their  
15 insurers.”).

16                   *c. Conclusion*

17 Accordingly, the Court finds that at a minimum, an independent implied  
18 cause of action exists under the IFCA for a first party claimant to bring a suit for a  
19 violation of the enumerated WAC provisions in RCW 48.30.015(5). The Court  
20 rejects the progeny of cases from the Western District of Washington which

1 reached a different conclusion, and concurs with the conclusion of Judge Rice's  
2 2014 opinions in *Merrill* and *Hell Yeah Cycles*.

3       2.     Application to Defendant's Motion

4           Based upon the foregoing analysis, to maintain a cause of action under the  
5 IFCA, Plaintiff must prove either 1) an unreasonable denial of a claim for  
6 coverage, 2) an unreasonable denial of payment of benefits, or 3) a violation of  
7 WAC 284-30-330, 350, 360, 370, 380, or an unfair claim settlement practice rule  
8 adopted under RCW 48.30.010 by the insurance commissioner that is codified in  
9 chapter 284-30 of the Washington Administrative Code. RCW 48.30.015(1), (5).

10           a.     *Unreasonable Denial of a Claim for Coverage*

11           The parties concur that no denial of coverage occurred and Plaintiff states  
12 his IFCA claim is only for denial of payment of benefits and for violating specific  
13 WAC regulations. ECF No. 53 at 6. Accordingly, there is no IFCA claim for  
14 denial of coverage.

15           b.     *Unreasonable Denial of Payment of Benefits*

16           First, Defendant's motion does not place reasonableness before the Court.  
17 ECF No. 59 at 2 ("the issue of reasonableness . . . is not before the [C]ourt"). The  
18 only issue of reasonableness this Court has addressed was the reasonableness of  
19 documents requested of the insured in Defendant's investigation of the loss,  
20 applied only to the interpretation of the contractual provisions necessary to

1 determine whether an appraisal could be compelled. ECF Nos. 25 & 30.  
2 Furthermore, neither party has provided a factual statement required under Local  
3 Rule 56.1. Accordingly, the Court's inquiry must be limited to whether Plaintiff's  
4 allegation is sufficient to proceed as a denial of payment of benefits.

5 Defendant argues no denial of payment of benefits occurred because  
6 Defendant offered to pay Plaintiff \$50,500 on February 19, 2014, and then  
7 maintains a valuation dispute arose. However, Plaintiff appears to maintain he  
8 was denied payment of the benefit of his insurance policy when he was offered the  
9 "extreme low-ball valuation of the R.V." ECF No. 53 at 6. In determining what  
10 is sufficient to maintain a denial of payment of benefit claim, the Court is guided  
11 by the following:

12 The Court must construe "denial of payments of benefits" to  
13 determine whether an outright refusal to pay a specific benefit  
14 promised by the policy is required or whether an unreasonably low  
15 payment will trigger the statute. Having reviewed RCW 48.30.015 as  
16 a whole and virtually all of the relevant case law, the Court concludes  
17 that an insurer cannot escape IFCA simply by accepting a claim and  
18 paying or offering to pay an unreasonable amount. The benefits to  
19 which a first-party insured is entitled are generally described as  
20 payment of the reasonable expenses or losses incurred as a result of  
an insured event. . . Where the insurer pays or offers to pay a paltry  
amount that is not in line with the losses claimed, is not based on a  
reasoned evaluation of the facts (as known or, in some cases, as  
would have been known had the insurer adequately investigated the  
claim), and would not compensate the insured for the loss at issue,  
the benefits promised in the policy are effectively denied. If, on the  
other hand, the insurer makes a reasonable payment based on the  
known facts or is making a good faith effort to appropriately value  
the loss, the fact that the insured did not immediately get all of the

1       benefits to which it may ultimately be entitled does not establish an  
2       “unreasonable denial of payment of benefits.”

3       *Morella v. Safeco Ins. Co. of Illinois*, No. C12-0672RSL, 2013 WL 1562032, at  
4       \*3 (W.D. Wash. Apr. 12, 2013) (citations omitted). The Court finds *Morella*  
5       provides a persuasive interpretation of how to evaluate a claim for a denial of  
6       payment of benefits when an offer is made but the value is disputed. However,  
7       the Court does not have before it a sufficient factual position from either party to  
8       determine the reasonableness of the valuation and further notes that the appraisal  
9       process is ongoing. Accordingly, at this time the Court cannot determine whether  
10      summary judgment is appropriate on Plaintiff’s unreasonable denial of payment of  
11      benefits IFCA claim.

12                     c.       Violation of the Enumerated WACs

13       Finally, as neither party has briefed the basis for the alleged enumerated  
14      WAC violations under RCW 48.30.015(5), the Court cannot determine the merits  
15      of the claim nor whether summary judgment is appropriate. Instead, all that can  
16      be stated is that based upon the foregoing analysis Plaintiff may pursue applicable  
17      WAC violations as an IFCA claim.

18                     **IV. CONCLUSION**

19       Therefore, the Court denies Defendant’s motion finding that on the records  
20      so far presented, Plaintiff may proceed on an IFCA claim on either a theory of an  
      unreasonable denial of payment of benefits or a violation of an enumerated WAC.

1 Accordingly, **IT IS HEREBY ORDERED:** Defendant's Motion for Partial  
2 Summary Judgment Regarding IFCA Claim, **ECF No. 49**, is **DENIED**.

3 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order  
4 and provide copies to all counsel.

5 **DATED** this 24th day of February 2015.

6   
7 SALVADOR MENDEZA, JR.  
United States District Judge